IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

MONDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

AND
THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT APPEAL Nos.1209, 1230, 1242 and 1243 of 2004

WRIT APPEAL No.1209 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23-04-2004 in W.P.No.11645 of 1993 on the file of the High Court.)

Between:

Smt. B. Aruna Devi, W/o. B.Visweswara Reddy,
R/o.H.No.1-11-254/1, Begumpet, Hyderabad.

..... APPELLANT

AND

1 Municipal Corporation of Hyderabad, rep. by the Commissioner,
M.C.H. Complex, Tank Bund, Hyderabad.
2 State of Andhra Pradesh, rep. by Secretary to Government,
Revenue Department, Secretariat Buildings, Hyderabad.
3 The Special Deputy Collector and Land Acquisition Officer, Unit-I,

M.C.H. Tank Bund, Hyderabad.
4 P. Suryanarayana, S/o. P.Janardhan Naik,
District Revenue Officer, Collectorate, Guntur, Guntur District.
5 B. Pawan, S/o. B. Visweswara Reddy,
H.No.1-11-254/1, Begumpet, Hyderabad, (Respondent No. 5 is

not necessary party to the present appeal).

.....RESPONDENTS

Counsel for the Appellant: Mr.A.SUDARSHAN REDDY

Counsel for Respondent No.1: Mr. T.ANANTA BABU, Senior

Counsel for Mr. N.Jayasurya

Counsel for Respondent Nos.2 & 3: G.P. FOR LAND ACQUISITION

Counsel for Respondent No.4 : None appeared.

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WRIT APPEAL NO : 1230 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23-04-2003 in W.P.No.11644 of 1993 on the file of the High Court.)

Between:

Smt. B. Aruna Devi, W/o. B. Visweswara Reddy,
R/o.H.No.1-11-254/1, Begumpet, Hyderabad.

..... APPELLANT

AND

1 Municipal Corporation of Hyderabad, rep. by the Commissioner,
M.C.H. Complex, Tank Bund, Hyderabad.
2 State of Andhra Pradesh, rep. by Secretary to Government,
Revenue Department, Secretariat, Buildings, Hyderabad.
3 The Special Deputy Collector and Land Acquisition Officer,
Officer Unit-I, M.C.H. Tank Bund, Hyderabad.
4 P. Suryanarayana, S/o. P. Janardhan Naik,
District Revenue Officer Collectorate, Guntur, Guntur District.
5 B. Gopal Reddy, S/o. B. Vijaya Reddy,
R/o.1-9-626, Bholakpur, Secunderabad.
6 B. Vijaya Reddy, S/o. B. Ranga Reddy,
R/o.1-9-626, Bholakpur, Secunderabad.
7 B. Pawan, S/o. B. Visweswara Reddy,
H.No.1-11-254/1, Begumpet, Hyderabad.

(Respondents No.4 to 7 are not necessary parties
in the present appeal)

.....RESPONDENTS

Counsel for the Appellant: Mr.A.SUDARSHAN REDDY

Counsel for Respondent No.1: Mr. T.ANANTA BABU, Senior

Counsel for Mr. N.Jayasurya

Counsel for Respondent Nos.2 & 3: G.P. FOR LAND ACQUISITION

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WRIT APPEAL No.1242 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23-04-2004 in W.P.No.11643 of 1993 on the file of the High Court.)

Between:

Smt.B.Aruna Devi, w/o B.Visweswara Reddy,
H.No.1-11-254/1, Begumpet, Hyderabad.

..... APPELLANT

AND

1 Municipal Corporation of Hyderabad, rep., by the Commissioner,
M.C.H.Complex, Tank Bund, Hyderabad.
2 State of Andhra Pradesh, rep., by Secretary to Government,
Revenue Department, Secretariat Buildings, Hyderabad.
3 The Special Deputy Collector and Land Acquisition Officer, Unit-I,

M.C.H., Tank Bund, Hyderabad.
4 P.Suryanarayana, S/o. P.Janardhan Naik, Collectorate, Guntur,

Guntur District.
5 G.Santosh Kumar, S/o. late G.Anjaiah,
R/o. H.No.1-2-499, Domalguda, Hyderabad.
6 G.Vijaya Kumar, S/o. late G.Anjaiah,
R/o. H.No.1-2-499, Domalguda, Hyderabad.
7 G.Ashok Kumar, S/o.late G.Anjaiah
R/o. H.No.1-2-499, Domalguda, Hyderabad.
8 G.Raj Kumar, S/o. late G.Anjaiah,
R/o. H.No.1-2-499, Domalguda, Hyderabad.
9 Smt.G.Savithri, D/o. late G.Anjaiah
R/o. H.No.1-2-499, Domalguda, Hyderabad.
10 Ms.G.M.Punyavathi, D/o. late G.Anjaiah,
R/o. H.No.1-2-499, Domalguda, Hyderabad.
11 Ms.K.R.Kusumalatha, D/o.late G.Anjaiah,
R/o. H.No.1-2-499, Domalguda, Hyderabad.
12 Ms.B.R.Vijaya Lakshmi, D/o. late G.Anjaiah,
R/o. H.No.1-2-499, Domalguda, Hyderabad.
13 B.Pawan, S/o. B.Visweswara Reddy,
H.No.1-11-254/1, Begumpet, Hyderabad.

(Respondents No.4 to 13 are not necessary parties
in the present appeal) .....RESPONDENTS

Counsel for the Appellant: Mr.A.SUDARSHAN REDDY

Counsel for Respondent No.1: Mr. T.ANANTA BABU, Senior

Counsel for Mr. N.Jayasurya

Counsel for Respondent Nos.2 & 3: G.P. FOR LAND ACQUISITION

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WRIT APPEAL No.1243 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 23-04-2003 in W.P.No.11641 of 1993 on the file of the High Court.)

Between:

Smt. B. Aruna Devi, W/o. B. Visweswara Reddy,
R/o. H.No. 1-11-254/1, Begumpet, Hyderabad.

..... APPELLANT

AND

1 Municipal Corporation of Hyderabad, rep. by the Commissioner,
M.C.H. Complex, Tank Bund, Hyderabad.
2 State of Andhra Pradesh, rep. by Secretary to Government,
Revenue Department, Secretariat Buildings, Hyderabad.
3 The Special Deputy Collector and Land Acquisition Officer Unit-I,
M.C.H., Tank Bund, Hyderabad.
4 Mr. T. Nerellu, S/o. T. Venkaiah,
10-3-761/44 B, Vijayanagar Colony, Hyderabad.
5 B. Pawan, S/o. B. Visweswara Reddy,
H.No.1-11-254/1, Begumpet, Hyderabad,

(Respondent Nos.4,5 are not necessary parties in this appeal)

.....RESPONDENTS

Counsel for the Appellant: Mr.A.SUDARSHAN REDDY

Counsel for Respondent No.1: Mr. T.ANANTA BABU, Senior

Counsel for Mr. N.Jayasurya

Counsel for Respondent Nos.2 & 3: G.P. FOR LAND ACQUISITION

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The Court made the following:

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COMMON JUDGMENT: (per the Hon'ble the Chief Justice)

Smt. B.Aruna Devi, one of the respondents in Writ petition Nos.11641, 11643, 11644 and 11645 of 1993 has questioned the legality and validity of the order passed by

the learned single Judge on 23-4-2004 disposing of the five writ petitions filed by the respondent Municipal Corporation of Hyderabad. While disposing of the writ petitions, learned single Judge declared the supplemental awards a nullity having been passed in violation of Section 28-A of the Land Acquisition Act (for short 'the Act') and accordingly mandamus was issued directing the unofficial respondents in the writ petition to refund the amount with interest at the rate of 12% per annum from the date of receipt of the amount till the date of deposit within a period of three months from the date of receipt of the order.

We need not state the facts in detail since the same had been duty extracted by the learned single Judge, but the admitted facts be noticed.

After the lands in question were acquired, the claimants had sought re-determination of the compensation under Section 28-A of the Act and accordingly they were successful in obtaining awards in their favour. It is not disputed that Section 28-A is not retrospective and awards could not have been passed. There were number of claimants who were added in the writ petitions and appellant is one of the claimants. Her son Mr. B.Pavan, though arrayed as respondent in four writ petitions, has not joined the appellant in filing the writ appeals.

Appellant's grievance now is that there was delay in filing writ petitions and that writ petitions could not have been filed by Municipal Corporation belatedly. Only to demonstrate that there was no delay and laches on the part of the Municipal Corporation in filing the writ petitions, the plea of fraud on the part of the claimants was raised by the Municipal Corporation. The proper remedy for the Municipal Corporation is to file civil suits for refund of the compensation amount which appellant had been paid with interest, and that in two cases, namely Writ Petition Nos.11643 of 1993 and 11644 of 1993 out of the amount received under the supplemental awards, appellant had to pay income tax and capital gains tax and that amount should not have been ordered to be refunded, and that the compensation in W.P.Nos.11641 and 11645 of 1993 has also not been received by the appellant. Thus, the appellant is not liable to refund the amount.

In a case like this where admittedly application under Section 28-A of the Act could not have been filed and award could not have been obtained, the very fact of the claimants filing application and obtaining the benefit cannot be disputed, and having received the compensation the claimants would be liable to refund the same to the

Municipal Corporation. We are not concerned with the amount if any paid by the appellant to the Income Tax Department or kept in deposit since the appellant has to refund the amount of compensation. Admittedly, the appellant has got benefit and the awarded compensation was collected. Therefore, there is nothing wrong in the order of the learned single Judge. Insofar as those cases in which appellant has not received the amount, we may observe that appellant had an opportunity to contest the writ petitions and she could not contest by filing a counter. Therefore, there was no occasion for the learned single Judge to consider the plea that no amount was received by the appellant in W.P.Nos.11641 of 1993 and 11645 of 1993. In case that be the position, there is no question of refund of the said amount by the appellant to the Municipal Corporation and in case appellant had received the amount it may be refunded with interest. Only in the event of the appellant availing the benefit under the supplementary awards, that liability will arise for refund of the amount with interest. With this clarification, we dismiss the appeals.

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(DEVINDER GUPTA, C.J.)

25th October 2004.

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(C.V.RAMULU, J.)

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To

1 The Commissioner, Municipal Corporation of Hyderabad,
M.C.H. Complex, Tank Bund, Hyderabad.
2 The Secretary to Government, State of Andhra Pradesh, rep.

by Revenue Department, Secretariat Buildings, Hyderabad.
3 The Special Deputy Collector and Land Acquisition Officer, Unit-I,

M.C.H. Tank Bund, Hyderabad.
4 Two C.Cs to Govt. Pleader for Land Acquisition, High Court Bldgs.,

Hyderabad (OUT).

5 Two C.D. copies.